

United States Court of Appeals for the Federal Circuit

VAUGHN M. GORDON,
Claimant-Appellant

v.

**DOUGLAS A. COLLINS, SECRETARY OF
VETERANS AFFAIRS,**
Respondent-Appellee

2025-1461

Appeal from the United States Court of Appeals for
Veterans Claims in No. 23-5047, Judge William S. Green-
berg.

Decided: August 20, 2026

JEFF P. JOHNSON, Troutman Pepper Locke LLP, Rich-
mond, VA, argued for claimant-appellant. Also repre-
sented by TIMOTHY L. MCHUGH.

MOLLIE LENORE GROPP, Commercial Litigation Branch,
Civil Division, United States Department of Justice, Wash-
ington, DC, argued for respondent-appellee. Also repre-
sented by ERIC P. BRUSKIN, PATRICIA M. MCCARTHY, BRETT
SHUMATE; JONATHAN KRISCH, DEREK SCADDEN, Office of
General Counsel, United States Department of Veterans
Affairs, Washington, DC.

Before REYNA, HUGHES, and STOLL, *Circuit Judges*.

STOLL, *Circuit Judge*.

This case reemphasizes both our jurisdiction and the jurisdiction of the United States Court of Appeals for Veterans Claims. Here, Vaughn M. Gordon appeals the decision of the Veterans Court, which affirmed the Board of Veterans' Appeals decision denying Mr. Gordon entitlement to an initial compensable disability rating for bilateral hearing loss. For the following reasons, we hold that our precedent in *Wingard v. McDonald*, 779 F.3d 1354 (Fed. Cir. 2015), applies to Mr. Gordon's appeal, and we accordingly dismiss for lack of jurisdiction.

BACKGROUND

I

38 U.S.C. §§ 1110, 1114(a)–(j), and 1155 all relate to a veteran's entitlement to disability compensation. Section 1110 provides:

For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, . . . the United States will pay to any veteran thus disabled . . . , or preexisting injury or disease was aggravated, compensation as provided in this subchapter

38 U.S.C. § 1110. Section 1155 grants to the Secretary the authority to “adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries,” such schedule “be[ing] constructed so as to provide ten grades of disability and no more, upon which payments of compensation shall be based, namely, 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent, and total,

100 percent.” *Id.* § 1155. Section 1114(a)–(j) provides monetary amounts for each grade of compensation from 10% disability to total disability. *Id.* § 1114(a)–(j).

II

Mr. Gordon served in the United States Army from February to August 1968 as a medical lab specialist. In August 2013, Mr. Gordon filed for service-connected benefits for bilateral hearing loss, and after a series of decisions and remands, in December 2021, the Department of Veterans Affairs (VA) granted Mr. Gordon service connection and awarded him a non-compensable (i.e., 0%) disability rating. In May 2023, the Board denied Mr. Gordon an initial compensable rating. Mr. Gordon appealed to the Veterans Court, arguing the appeal “require[d] a review of the statutory provisions of [38 U.S.C. §§ 1110, 1114(a)–(j), and 1155] to determine whether the Board unlawfully denied Mr. Gordon an initial compensable rating for his resulting bilateral hearing loss.” J.A. 89.

Before the Veterans Court, Mr. Gordon argued that by awarding him a non-compensable rating, the Secretary was “creat[ing] an eleventh grade of disability” in contravention of the prescribed statutory framework. J.A. 93–94. The Veterans Court determined that under its jurisdictional statute at 38 U.S.C. § 7252(b), as well as under our precedent in *Wingard*, it did not have the authority to “review[] the schedule of ratings for disabilities adopted under section 1155 . . . or any action of the Secretary in adopting or revising that schedule.” J.A. 4 (citation omitted). It highlighted that this jurisdictional bar included reviewing whether “including a 0% rating[] substantively violates statutory constraints.” *Id.* (citation omitted). The Veterans Court was not persuaded it “ha[d] the authority to consider [Mr. Gordon’s] argument,” noting (1) its preclusion from review of the ratings schedule under § 7252(b) and

(2) Mr. Gordon’s failure to distinguish his argument from a challenge of the ratings schedule. *See* J.A. 4–5.¹

Mr. Gordon appeals.

DISCUSSION

This case turns on the jurisdiction given by Congress to both our court and the Veterans Court under two statutes: 38 U.S.C. § 7252 and 38 U.S.C. § 7292. The Veterans Court “ha[s] exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals.” 38 U.S.C. § 7252(a). However, § 7252(b) expressly states that the Veterans Court “may not review the schedule of ratings for disabilities adopted under section 1155 . . . or any action of the Secretary in adopting or revising that schedule.” *Id.* § 7252(b). Congress carved out a similar exclusion from this court’s jurisdiction. Specifically, 38 U.S.C. § 7292(a) provides that we may review:

[A] decision of the [Veterans] Court on a rule of law or of any statute or regulation (*other than a refusal to review the schedule of ratings for disabilities adopted under section 1155 . . .*) or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the [Veterans] Court in making the decision.

Id. § 7292(a) (emphasis added to highlight the subject matter excluded from our court’s jurisdiction).

We interpreted these two statutes and clarified the jurisdiction of both courts with regard to challenges to the

¹ While the stated disposition in the Veterans Court’s decision was an affirmance, by holding that it lacked jurisdiction to consider Mr. Gordon’s argument, it effectively dismissed Mr. Gordon’s appeal. Any error in the disposition designation was harmless.

schedule in *Wingard*. There, the veteran had been assigned a 0% disability rating for a service-connected inguinal hernia. *Wingard*, 779 F.3d at 1355. Upon the veteran's death, his daughter, Ms. Wingard, filed a claim with the VA for a burial-plot or interment allowance under 38 U.S.C. § 2303 and for burial benefits under 38 U.S.C. § 2302(a)(1). *Wingard*, 779 F.3d at 1355. Ms. Wingard argued the veteran was entitled to compensation "because . . . §§ 1110 and 1155 prohibited the [VA] from assigning [the veteran] a 0% disability rating after finding that he had a service-connected disability." *Id.* at 1356. We summarized Ms. Wingard's fundamental position on appeal:

Ms. Wingard's core challenge is that regulations creating a "zero-percent" rating violate § 1155's command that the Secretary establish a schedule "provid[ing] ten grades of disability and no more" in 10 percent increments from 10 to 100 percent as well as § 1110's statement that "the United States will pay to any veteran thus disabled . . . compensation as provided in this subchapter."

Id. (alteration and omission in original).

We held that 38 U.S.C. § 7252(b) "squarely precludes the Veterans Court from determining whether the schedule, by including a 0% rating, substantively violates statutory constraints." *Id.* We explained that Ms. Wingard's case, as presented, involved "a substantive challenge to the schedule as conflicting with the statute." *Id.* at 1357. And therefore, "[u]nder § 7252(b), whose language has not changed since *Wanner[v. Principi]*, 370 F.3d 1124 (Fed. Cir. 2004)], the Veterans Court could not consider Ms. Wingard's statutory challenge." *Wingard*, 779 F.3d at 1357. And when further considering "whether this court may review the challenge [to the 0% rating] even though the Veterans Court could not," *id.*, we determined we too may not review it. *See id.* at 1357–59; *id.* at 1359 (noting

the judicial review provisions “preclude this court from reviewing, on appeal from the Veterans Court, a substantive statutory challenge to [VA] rating-schedule regulations”).

The question raised by Mr. Gordon before the Veterans Court and before us is identical to the question raised in *Wingard*. Mr. Gordon argued before the Veterans Court that the Board’s denial of an initial compensable rating is “inconsistent with the unambiguous mandate of § 1110 to pay compensation for a resulting disability and the explicit provisions of §§ 1114(a) through (j), which provide for only ten grades of disability.” J.A. 95; *see also* J.A. 95–96 (claiming that the Secretary’s regulation providing for 0% evaluations is “inconsistent with” §§ 1110, 1114(a)–(j), and 1155). He makes the same argument before us. Appellant’s Br. 20 (“Mr. Gordon claims that [s]ections 1110 and 1114 require paying a veteran compensation for a service-connected disability, and thus it is an error of law for the Veterans Court to fail to apply the plain language of these provisions.”); Appellant’s Reply Br. 2 (“Because he has a disability, the statute entitles Mr. Gordon to a ten-percent rating and compensation.” (citing 38 U.S.C. § 1155)). These arguments are “substantive challenge[s] to the schedule as conflicting with the statute,” which neither we nor the Veterans Court can review. *Wingard*, 779 F.3d at 1357.

We are bound here by our holding in *Wingard*. *See Newell Cos., Inc. v. Kenney Mfg. Co.*, 864 F.2d 757, 765 (Fed. Cir. 1988) (“This court has adopted the rule that prior decisions of a panel of the court are binding precedent on subsequent panels unless and until overturned *in banc*.”). And Mr. Gordon’s arguments attempting to distinguish *Wingard* are unavailing. *See* Appellant’s Br. 19 (“*Wingard* does not apply because Mr. Gordon seeks to review the Secretary’s action assigning him a [0%] disability rating.”); Appellant’s Br. 24 (“The [c]ourt’s decision [in *Wingard*] did not discuss whether [§] 1114(a) requires compensation . . .”).

Because *Wingard* directly applies to Mr. Gordon's arguments, we conclude we lack jurisdiction to consider them. *See* 779 F.3d at 1359 (holding 38 U.S.C. § 7292 "preclude[s] this court from reviewing, on appeal from the Veterans Court, a substantive statutory challenge to Department rating-schedule regulations").

In support of our jurisdiction, Mr. Gordon points to our later decision in *Frazier v. McDonough*, 66 F.4th 1353 (Fed. Cir. 2023), which he argues "indicates that there is no jurisdictional bar to considering [his] claim." Appellant's Br. 24. There, Ms. Frazier raised a similar issue, albeit for the first time while on appeal to us. After no party argued that we lacked jurisdiction to consider the issue in the first instance, we addressed it on the merits. *See Frazier*, 66 F.4th at 1356–57, 1357 n.2, 1360. Specifically, we rejected Ms. Frazier's new argument that 38 U.S.C. §§ 1114 and 1155 bar the Secretary from adopting non-compensable disability ratings. *Id.* at 1360. In doing so, we noted that various veterans' benefits statutes refer to non-compensable disabilities and thus contravened Ms. Frazier's argument that the existence of a "disability" necessarily mandates a compensable rating. *Id.* at 1360–61.

Notwithstanding *Frazier*, we hold that we lack jurisdiction in this case. The differences in procedural posture explain any divergence in how *Frazier* and *Wingard* addressed the arguments of their respective appellants. And even assuming some tension between the two decisions, *Wingard* was decided prior to *Frazier*. When two precedential cases are potentially inconsistent, we are bound by the earlier precedent. *See Newell*, 864 F.2d at 765 ("Where there is direct conflict, the precedential decision is the first."). Accordingly, we hold that we lack jurisdiction for the reasons set forth in *Wingard*.

CONCLUSION

We have considered Mr. Gordon's remaining arguments but find them unpersuasive. For the foregoing reasons, we dismiss.

DISMISSED

COSTS

No costs.